

KC

THE KING'S COUNSEL
MAGAZINE

SPECIAL EDITION

HM KING CHARLES III

THE CORONATION: LAW AND SYMBOLISM

**Prof. Sir John H. Baker K.C., LL.D. (Cantab.), F.B.A.,
Downing Professor Emeritus of the Laws of England
University of Cambridge**



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Warmest congratulations on the occasion of the coronation of their Majesties King Charles III and Queen Camilla.



EDITORIAL



In this special edition, we have had the pleasure of inviting **Professor Sir John H Baker KC, Downing Professor Emeritus of the Laws of England University of Cambridge** to provide us with an Op-Ed on the subject of coronation. Prof. Baker has given his perspective on the law and symbolism of the coronation.

HM The King Charles III and the Royal Family have garnered considerable good will among the people and this is now part of public diplomacy of the UK. The role played by the Royal family and the media coverage given to them is a matter that needs recognition from the UK Parliament as to the cost of good will generated over the years. The royal family has been and can continue to be an invaluable asset to the British public diplomacy and also for the British government in the pursuit of foreign policy objectives. HM The King Charles III is a seasoned political observer and can certainly play a huge role in British diplomacy. The coronation ceremony will be a reflection of the monarch's role today and these official ceremonies are rooted in the long cherished traditions and pageantry. Across the world, the British royal family represents British culture and is inextricably linked to the brand 'British'.

HM King Charles III interest in the environment is fundamentally international and the role played by the Prince's Trust International is one example of the charitable activities outside the UK and Commonwealth with which HM has proven to the world his total commitment to the environment. A matter more pressing for the world than it has ever been in the past.

We take this opportunity to wish their majesties King Charles III and Queen Consort Camilla our warmest congratulations on the occasion of the official coronation to be held on 6th May 2023

**Srinath Fernando,
Editor-In-Chief / Publisher
01 May 2023**



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THE CORONATION: LAW AND SYMBOLISM

Prof. Sir John H. Baker K.C., LL.D. (Cantab.), F.B.A., Downing Professor Emeritus of
the Laws of England University of Cambridge



Those of us – a dwindling number –
who remember seeing the last
coronation on our television

screens in 1953 have never
forgotten the immense impact
which the occasion made at the

time, even on young schoolchildren. Our newly acquired television sets were small and primitive, the vision marred by interference and slippage, but we were captivated by the awesome magnificence of the events which we were able to watch and hear from our homes and see in the newspapers. Although both the televisions and the newspapers relayed the events in black-and-white, the colour and brilliance were easy to imagine – and we were not used to colour and brilliance in post-war Britain. The music stayed with us for life. The coronation was intended to lift the spirits of the nation as it entered a new Elizabethan era under a beautiful young queen, and it did so. Seventy years later, it cannot be expected that the next coronation will be nearly as lavish, and the population which watches it will probably be more cynical and prone to criticise the expense. It will, nevertheless, be an extraordinary spectacle and few sensible people will remain unmoved by it in one way or another. But what does it mean?

The first point to make – especially in a lawyers' journal – is that a coronation has no legal purpose or effect. The king is king from the very moment the previous monarch dies, since there can be no vacuum or interregnum. As our sixteenth-century law books tell us, the king in his personal body is mortal, but his 'politic' body never dies. When Elizabeth I died in 1603, some Roman Catholics spread the rumour that her successor (James VI of Scotland, James I of England) was not king until he was crowned, and

so it was an opportune moment for revolution. If James was not yet king, working to prevent his succession could not be treason. The idea was easy for the ignorant to grasp, but fundamentally wrong. The plot was discovered, and its perpetrators were tried and executed for high treason: a hard lesson. Of course, there were times in history when the identification of a king's successor was for a short time disputed or problematic. But the moment of accession was not that of coronation; it was the moment when the king was accepted, proclaimed and took the reins of government. King Edward VIII was never crowned, but he was undoubtedly king for the short period before his abdication in 1936.

Coronation is not, then, a legal necessity. But it has seldom been omitted, and then usually because the king did not reign long enough for it to be arranged. Its significance is not so much legal as political and religious. It is political in that it confirms in the most public and ceremonious manner the transfer of kingship to the new monarch. It takes the form of a service conducted by the archbishop of Canterbury, as 'primate of all England', in the abbey church of the royal palace of Westminster. The service begins with The Recognition, when the archbishop of Canterbury addresses the people on each of the four sides of the area in Westminster Abbey where the king stands, saying: 'Sirs, I here present unto you King Charles, your undoubted King ...'. Thereupon the people who are present, with loud acclamations, cry out 'God save

King Charles'. According to the order of service, 'Then shall the trumpets sound.'ⁱ It is a formal acknowledgment of what has already happened.

The king next takes The Oath, as prescribed by statute in 1689 (1 Will. & Mar., c. 6). The oath is not required to be taken by the king immediately after acceding to the throne. But it is a statutory requirement that it be taken 'in all times to come by the kings and queens of this realm ... at the times of their coronation'. It is assumed that kings and queens will be crowned, and that they will therefore in due course take the oath. The 1689 oath evolved from earlier formulations going back to medieval times – so far back, indeed, that we do not know the earliest wording. But, so far as history records, the essential elements have always been that the king will uphold the Church and the Law: that he is to rule as a constitutional monarch and not as a despot. The first clause of the oath is to govern the people of the United Kingdom and other possessions of the crown 'according to their respective laws and customs'. The second is to 'cause law and justice, in mercy, to be executed in all your judgments'. The phraseology of these two clauses harks back to a time when the government really was exercised by the king in person. But even in medieval times the king did not give judgments in his courts. The prerogative of justice was from an early date delegated to his judges, who took a more detailed oath requiring them to 'do equal law and execution of right to all the king's

subjects, rich and poor'. And the prerogative of government is now likewise delegated, to the prime minister and other ministers of the crown, who take a different oath as members of the Privy Council. The king's oath is therefore, in a sense, taken on behalf of all the servants of the crown, judicial and administrative, who act in his name. And it carries real meaning, in that the ultimate sanction still lies with the king, who could – indeed, must – remove a prime minister who acts illegally and unconstitutionally without regard for Parliament or the courts. It is, of course, the theoretical existence of this last resort which makes it practically unnecessary. The usual way of challenging unlawful acts by ministers is by judicial review before the king's judges sitting in the King's Bench Division of the High Court, and it is the convention that the ministers of the crown – after pursuing any appeals they think proper – will comply with the decisions of his majesty's judges. A prime minister may mix with presidents, and think like a president, but he is answerable to the king and not himself a head of state.

The third and final clause of the oath is to 'maintain the laws of God and the true profession of the Gospel', and more particularly 'the Protestant Reformed religion established by law', 'the settlement of the Church of England', and all rights and privileges which belong by law to the clergy. The wording is unmistakably that of 1689, when there was a greater fear of Roman Catholic subversion of the state than there is today, and there has

been much discussion of whether it should be changed to make it more ecumenical. Since no Act of Parliament has been passed to effect any alteration, it must be supposed that change has proved too problematic. The Church of England is the national Church, part of the catholic Church established in England since the year 597, the 'Ecclesia Anglicana' of Magna Carta (1215), and the king is its supreme earthly governor – not in priestly functions, since he is not ordained to the priesthood, but as king. The oath certainly does not bind the king to disrespect other Christian denominations, or other religions, or to refuse his assent to legislation which might affect the position of the Church of England. The churches in Wales and Ireland were disestablished by Act of Parliament, with the royal assent, and no doubt the Church of England could itself be disestablished if it were the will of Parliament. But the oath reflects the present legal position of the Church of England and its relationship with the sovereign.

The coronation oath does not, like an oath taken in a court of law, begin 'I swear by Almighty God ...'. It is in form and essence a trio of essentially secular promises to accept those things which Parliament has decreed to be preconditions of crowning. The remainder of the coronation service, however, is a religious rite. The most significant first part is The Anointing, when the king is anointed with consecrated holy oil, 'as Solomon was anointed king by Zadok the priest and Nathan the prophet'. This is regarded as such a sacred part of the ceremony that it

is hidden from public view by a canopy, borne by four knights of the Garter, and will not be televised. It will have a different symbolism for different people. It is of immense antiquity, rooted in the Old Testament tradition of a direct connection between kings and God. Few now believe in the divine right of kings to rule, and even if inheritance by birth is taken to indicate an element of divine choice, it is a case of God acting within the rules of English law. Even so, there is still a lingering sense that the king – not as supreme governor of the Church, but simply as king – has some primeval connection with a timeless mystery.

After the anointing, the king is placed on the throne and presented by the archbishop with all the regalia – the symbols of kingship – which are usually kept under armed guard in the Tower of London. First, the Sword of State, with which the king is (metaphorically) enjoined to do justice, stop the growth of iniquity, protect the Church, help and defend widows and orphans, and generally do good things. After receiving the sword from the archbishop, the king is expected to lay it back on the altar as an oblation; it is then redeemed for one hundred shillings (£5) and carried before the king for the rest of the ceremony. The archbishop then presents the king with the orb and cross, the ring 'of kingly dignity', the sceptre, and the rod with the dove. Finally, the archbishop places on the king's head the golden crown, the principal symbol of kingship for over a thousand years. Since Tudor

times it has been an arched crown, signifying that England – and now the United Kingdom – is ‘an empire of itself’. As soon as the king has been crowned there is another acclamation of ‘God save the King’, whereupon ‘the trumpets shall sound, and the great guns at the Tower shall be shot off’: reminders of a time, not so long ago, when the event could not be broadcast to the world electronically. Finally, the archbishop and a few representative peers kneel before the crowned king and do homage as his ‘liege man of life and limb’. This is the last survival of a ceremony once performed when anyone became a freehold tenant of land, sealing the bond with his feudal lord. In the coronation it represents the allegiance owed to the king by the bishops, peers and all the realm, who enjoy their freedoms and properties under a monarch pledged to uphold the law.

The king will be crowned as king of the United Kingdom, and of the other possessions of the crown, and so he will not be crowned separately in Scotland – even though the regalia there are older than those in England, having escaped destruction by the Cromwellian regime. Scotland will be represented by the ‘stone of destiny’, moved from Edinburgh castle and placed beneath the throne; it had been captured from the Scots in 1296 and used at English coronations ever since, though it was returned to Scotland in 1996. The details of the coronation are in origin necessarily English, and the service is conducted by an English bishop in

an English church. That, however, is only because the unions with Scotland and Ireland occurred after they began. They have become British, in the wider sense, and they have parallels in ancient coronation ceremonies used elsewhere in Europe. The words used in the ceremony have been modified over the centuries as the territories of the crown have grown, and then diminished, and as religious concerns have changed. But they represent, at heart, the immense importance of constitutional monarchy as a form of government. As so much of the world comes under the control of dictators and authoritarian heads of state, presidents whose principal objective is to maintain and increase their own power, we can in the United Kingdom celebrate the coronation for the limitations on power which it symbolises.

ⁱ The details given here are taken from the 1953 order of service, duly amended, though it is not yet certain what changes (if any) will be made this year.

POLITICAL HISTORY ON THE CORONATION OATH



LORD STANMORE

My Lords, I rise to ask His Majesty's Government whether the changes in His Majesty's Coronation Oath rendered necessary by the disestablishment of the Church of Ireland can be effected without recourse to legislation. This is a matter to which I have no doubt the Government have given full consideration, and I have as little doubt that the decision at which they have arrived, or at which, at least, they appear to have arrived, has been founded on good grounds. But the whole question is a very curious and complicated one, and I think there are other noble Lords beside myself who would like to know exactly what the decision of the Government has been and the grounds upon which that decision has been arrived at. Such of your Lordships as were unacquainted with them before were made well acquainted with the provisions of a certain Act passed in the reign of William and Mary by the discussions which took place last year on the subject of the King's Declaration. But there is another Act of that reign with which the House may not be equally familiar, and which prescribes the

terms in which the Coronation Oath is to be taken. That Act of Parliament, I believe, has never been repealed. The Oath as provided in the Act of William and Mary is a general one; it contains provisions culled out of the old Coronation Oaths, and adds one provision by which the King binds himself in somewhat general terms not to do anything against the Protestant religion. To the terms of that Oath, as contained in the Act referred to, I do not think objection can be raised; but there was a subsequent Act passed after the Union with Scotland, the effect of which upon the Act of William and Mary has sometimes been overlooked. After the Union with Scotland, it was thought necessary that a clause to preserve the rights and establishment of the Presbyterian Church in Scotland should be introduced into the Act sanctioning the Union. That was a right and fail-thing to do, but some zealous Church people in England seem to have taken fright at it and to have insisted that another clause should be inserted in the Act of Union providing for a new and additional provision in the Coronation Oath, to the effect that the Sovereign would maintain and

preserve inviolably the settlement of the Church of England in England and Ireland, the Dominion of Wales, and the town of Berwick-upon-Tweed. The Oath in that form was taken by George I., George II., and George III., but on the Coronation of George IV. a slight difference of wording was introduced, without, so far as I know, any legal sanction whatever. I suppose that the alteration, which substituted the words "the United Church of England and Ireland" for the words "the Churches of England and Ireland," was introduced as being in harmony with the spirit of, if not rendered necessary by, the Act of Union with Ireland, but there was no express legislative provision for the change. Two views have been expressed with regard to the powers under which that alteration was made. It is contended, on the one hand—and I fancy we shall be told so today—that the Act uniting the two Churches did implicitly, though not explicitly, alter the Act of Anne, and made it possible for the Sovereign to take the Oath as affecting the United Church of England and Ireland. The other view taken is one which I do not think will find favour with the noble and learned Earl on the Woolsack, though it may with the Most Rev. Primate the Archbishop of Canterbury, who, if I am rightly informed, has taken credit to himself for the new Coronation service being put out with the sanction of the King without recourse to the Privy Council. That view is that it is within the Sovereign's prerogative to change the wording of the oath, though not its general meaning. The language of the Act disestablishing the Irish Church is very peculiar, and I doubt whether it can be said to repeal, even implicitly, the Act of Anne, for it says that—"In all enactments, deeds, and other documents in which mention is made of the United Church of England and Ireland, the enactments and provisions relating thereto shall be read distributively in respect of the Church

of England and the Church of Ireland, but, as to the last-mentioned Church, subject to the provisions of this Act."

That, taken by itself, would restore things to the condition in which they were previous to the Act of Union—that is to say, it would restore the Act of Anne to its full operation. It is now proposed to change the Oath again, and what I wish to impress upon the House is this: that, whichever answer is given to my question, it only shows how useless, and worse than useless, such an Oath with regard to the maintenance of a particular institution is, because the only way in which we can read such an Oath nowadays is that it is subject to what may be done by Parliament subsequently to the Oath being taken. That is the way in which the Oath was read—correctly read, I think—by the late Queen Victoria. The Disestablishment of the Church of Ireland was not retarded for one single hour by the fact that Her Majesty had sworn to maintain the Established Church in Ireland. As a matter of fact, the Oath is taken with the certainty that it will be broken if His Majesty's Ministers and Parliament advise the King to break it. When noble Lords opposite come into power, they may—they will, if they adhere to former professions—advise the King that the Church should be disestablished in Wales, and, if Parliament gives them a majority to that effect, does any one suppose that the Church in Wales will last a moment longer because the King has taken an Oath that he will preserve it inviolably? Certainly not. The King will give his assent to its disestablishment, and I think in the circumstances that it is only right that he should do so, both to the Most Rev. Primate who administers the Oath, and the Sovereign who takes it, know perfectly well that the Oath is a mockery, and can be broken whenever that course is found expedient. What advantage, therefore, is gained by the retention of

the Oath I cannot see. But we must not overlook the fact that a real danger attends its retention. The late Queen, being a woman of great grasp of mind and power, saw that was the right thing to do, and she felt that as a Sovereign she must disregard the Oath. But, though we have had a Victoria and an Elizabeth as our Queen, we have had also an Anne and a Mary—women of sensitive conscience, narrow intellect, and obstinate character, and we may have such again. Nor is it possible to deny that the scruple felt by those Sovereigns who have considered that the Oath was not only taken in their official capacity but is also binding on the individual Christian man or woman as an obligation taken by him or her personally in the sight of God is one which, if erroneous, yet deserves respect. The peril of this Oath is that a trap is set for the Sovereign's conscience and an occasion, for scoffing given to those who deride. There is nothing so perilous as political prophecy, but I think it is not hard to see that all these promissory oaths, which have to be taken with a reservation, which deprive them of all value, will be ere long wholly swept away.

THE EARL OF HALSBURY

I must decline to go into the general history of this question. My answer to the noble Lord is a very simple one—namely, that it is not necessary to apply for legislation. Legislation has already been applied to the question.

The 69th section of the Act disestablishing the Irish Church states that—

"In all enactments, deeds, and other documents in which mention is made of the United Churches of England and Ireland, the enactments and provisions relating there to shall be read distributively in respect of the Church of England and of Ireland, but, as to the last-mentioned Church, subject to the provisions of the Act." That provision was designedly introduced in the section for the express purpose of dealing with this and other similar questions, so that the inconsistency which is supposed to exist is got rid of.

THE EARL OF ROSEBERY

I do not know if this would be the proper opportunity of asking what is the intention of the Government with reference to the Royal Declaration Bill introduced last session, and on which so much time was spent.

THE MARQUESS OF SALISBURY

I am afraid it is not an unusual experience to find that valuable time is spent in one House which is not redeemed in the other. The Government have not gone on with the Bill, because it became clear from what was said in the House of Commons that it could not be passed, and it was still more clear from what was said in this House at the close of the debate by Lord Llandaff.

PRIME MINISTER SIR WINSTON CHURCHILL ON CORONATION OATH CHANGES



HC Deb 25 February 1953 (vol 511 cc2091-32091)

The Prime Minister

I should now like to make my statement in reply to Question No. 45.

The terms of the Coronation Oath were first prescribed by the Act 1 William and Mary, chapter 6. Since then its terms have been changed at least five times. On one occasion only has the change had legislative sanction, namely the change which was introduced as a result of the Act of Union with Scotland. The Treaty of Union had provided that in Scotland the religion professed by the people of Scotland should be preserved to them and confirmed by every King on his accession, and it was thought proper that similar provision should be made for the protection of the English Church in England. The Coronation Oath was altered and enlarged accordingly.

For the many subsequent changes, large or small, which have been made in the terms of the Oath there was no legislative sanction. They were made at various times, and, in particular, after the Act of

Union with Ireland, after the Disestablishment of the Irish Church, and also after the passing of the Statute of Westminster. On the last occasion the question whether the changes that were necessary to meet the new constitutional position could be made without an Act of Parliament was carefully considered, and the Lord Chancellor and the Law Officers of the day advised that they could.

am advised by my noble Friend the Lord Chancellor that this opinion was clearly correct, and that the changes now proposed, which are, perhaps, less substantial than those made in 1937, but are required to meet the new constitutional position created by the Indian Independence Act, 1947, and other statutes, can also be made without legislative sanction.

Her Majesty's Government propose to follow this long line of precedents. To accept the view that changes in the terms of the Oath which are necessary to reconcile it with a changed constitutional position cannot be made

except with the authority of an Act of Parliament would be to cast doubt upon the validity of the Oath administered to every Sovereign of this country since George I.

If, as I am advised, the Coronation Oath can be lawfully administered in the terms now proposed, no useful purpose would be served by legislation. It must be remembered that at Westminster the Queen will be crowned Queen not only of the United Kingdom, but also of other self-governing countries of the Commonwealth. The form of Oath now proposed has been put to each of these countries and none has raised any objection, or has suggested that it is necessary to pass legislation in its own Parliament or in the Parliament of the United Kingdom. Indeed, it would not be possible in the time now remaining before the Coronation to arrange for legislation to be passed by the Commonwealth countries concerned.

Mr. Attlee

May I say, having had some experience of these difficulties, that I think it is extremely satisfactory that agreement has been obtained throughout the Commonwealth on this Oath, and that we should be well advised to allow this to proceed without legislation?

Mr. E. Fletcher

May I, with respect, put this to the Prime Minister? While no one would wish to throw doubt on the validity of the Coronation Oaths in the past, in view of the fact that the Coronation Oath is a Parliamentary creation, and is intended as a limitation on the Prerogative, is it not desirable, though it may be inconvenient, that any changes that are proposed this year should have legislative sanction, for which, I am sure, there would be no

difficulty in making the appropriate arrangements on a non-controversial basis? It is a matter which affects the rights of Parliament, and not merely the rights of the Executive.

The Prime Minister

I think those important and weighty points have been covered by the answer which I have given to the House.

Mr. Healy

Could the right hon. Gentleman tell us whether he has considered the speech of an important member of the Irish Government in regard to this matter?

The Prime Minister

Is the hon. Gentleman speaking for the Irish Government of Northern Ireland or for the Eire Government, I believe it is—the Government of the Republic?

The official name is the Government of Ireland, not the Government of Northern Ireland, which is a very small part of Ireland.

Mr. Emrys Hughes

Is the Prime Minister aware that there is a strong feeling in Scotland about the Oath being taken to a Queen Elizabeth II on the ground of historical inaccuracy? In view of his great claim to historical accuracy himself, will he not do something to meet this very strong resentment in Scotland?

The Prime Minister

I shall be very glad to hear from the hon. Member if he will put his question in the pillar box.

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His Honour Judge Barrington Black KC

INTERVIEW

His Honour Judge Barrington Black KC on his book
Both Sides of the Bench and on British justice system.

Prof. Joe McIntyre (University of South Australia)
On the Judicial Dissent



Lord Hailsham's Coded Diary



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Professor Christopher F Forsyth



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Professor Christopher F Forsyth
Emeritus Professor of Public Law,
University of Cambridge

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A Tribute to late Justice C S Weeramantry
A former Judge of the International Court of Justice

Debate on the right of conscientious objection



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**SPECIAL MESSAGE TO THE PRESIDENT OF
THE UNITED STATES OF AMERICA JOE BIDEN ON
NATIONAL SECURITY OF CANADA, UK, NATO, ISRAEL, INDIA, JAPAN, SOUTH
KOREA, AUSTRALIA AND NEW ZEALAND**

Dear Mr. President,

The invention of hypersonic missiles by the perceived enemies of the United States would be a huge national security concern. The speed with which they are delivered will wreak havoc resulting in breaking the constitutional order of the United States which it had cherished for two centuries. The attack on the U.S. satellite communication facilities in space could be the first strike option against the U.S. It could cut off the President of the U.S from the Nation, from the Military Commanders and the civil government as a result you will not be able to communicate with U.S allies viz., Canada, UK, Europe/ NATO, Israel, Japan, South Korea, India, Australia, New Zealand, and elsewhere. Your position as Commander-In-Chief of the U.S forces would be meaningless if you are unable to communicate with the Nation. The key allies of the U.S., would lose confidence in your ability to wage a coordinated battle against the perceived enemies. The authoritarian regimes in the World would feel triumphant and forge new strategic alliances.

We, KC – The King's Counsel Magazine, call upon you to immediately appoint a Presidential Commission to inquire into the efficacy of the U.S constitution and whether it should be suitably revised or amended to deal with the new threats. This will ensure that the security of the strategic allies of the U.S too is guaranteed in case such an eventuality takes place.

OVER TO YOU MR. PRESIDENT

SRINATH FERNANDO, LL.M.,
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